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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,429	10/16/2003	Mark S. Hefty	42P8192C	2222
8791	7590	11/01/2007	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN			HAILE, FEBEN	
1279 OAKMEAD PARKWAY			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/688,429	HEFTY ET AL.
	Examiner Feben M. Haile	Art Unit 2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 15 August 2007.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 31-41 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 31-41 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Response to Amendment

1. In view of applicant's amendment filed August 15, 2007, the status of the application is still pending with respect to claims 31-41.

2. The amendment filed is insufficient to overcome the rejection of claims 31-39 based upon Forin (US 6,594,701) as set forth in the last Office action because: Applicants claimed invention fails to clarify a distinction over the cited reference, thus the subject matter is not patentable.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 31-39 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 3 of U.S. Patent No. 6,347,337, hereinafter referred to as Shah et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Regarding claims 31, 34, and 37, Shah et al. discloses determining a number of buffers available at a second node to receive a received message; and sending a message from a first node if at least a number of buffers available at a second node to receive a received message is at least equal to two (claims 1 and 2; determining if a sufficient number of send credits is available at a local endpoint system, and if a sufficient number of send credits are available sending data from the local endpoint system to a remote endpoint system, where the send credits represent one or more receive buffers).

The instant application merely broadens the scope of the copending application by eliminating the limitation “if a sufficient number of send credits is not available at the local endpoint system, sending a credit request packet from the local endpoint system to the remote endpoint system and waiting for a credit response packet from the remote endpoint system before sending a data packet”.

It would have been obvious to one having ordinary skill in the art at the time invention was made to eliminate limitations that are not unnecessary for their invention and to rephrase elements so long as the unit or element under different name would perform the same function. Furthermore, it has been held that the omission of an

element and its function is an obvious expedient if the remaining elements perform the same function as before. *In re Karlson*, 136 USPQ 184 (CCPA).

Regarding claims 32, 35, and 38, Shah et al. discloses receiving at the first node an indication of the number of buffers available at the second node to receive the received message (**claim 2; the send credits provided to the local endpoint system represent one or more receive buffers that are available at the remote endpoint system for receiving and storing data**).

Regarding claims 33, 36, and 39, Shah et al. discloses the first node and the second node are coupled together via a switched fabric (**claim 1; sending data from the local endpoint system to the remote endpoint system across a network**).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 31-41 rejected under 35 U.S.C. 102(e) as being anticipated by Forin (US 6,594,701), hereinafter referred to as Forin.

Regarding claims 31, 34, and 37, Forin discloses determining a number of buffers available at a second node to receive a received message (**column 12 lines 37-41; a receiver 62 sends a credit message 82 to a sender 60 that indicates a**

receiving application 74 has a first and second buffer of sizes 4 and 2 bytes, respectively, for receiving data); and sending a message from a first node if at least a number of buffers available at a second node to receive the received message is determined by the first node to be at least equal to two (figure 2 and column 12 lines 41-47; the sender 60 transmits data 84 according to the credit message 82).

Regarding claims 32, 35, and 38, Forin discloses receiving at the first node an indication of the number of buffers available at the second node to receive the received message (figure 2 and column 11 line 62-column 12 line 4; a receiver 62 communicates the credit 82 to control the flow of data 84 transmitted by the sender 60, where the credit messages may include size information relating to one or more receive buffers).

Regarding claims 33, 36, and 39, Forin discloses the first node and the second node are coupled together via a switched fabric (figure 2 and column 11 lines 4-12; the sender 60 and the receiver 62 communicate over link 64 that may comprise any medium for transferring signals between connected devices).

Regarding claim 40, Forin discloses wherein otherwise no message is sent (column 4 lines 40-42; data 84 is only sent when the sender 60 has been notified through the credit list that a receiver buffer is available).

Regarding claim 41, Forin discloses determining a number of buffers available at the first node to receive another message (column 12 lines 37-41; a receiver 62 sends a credit message 82 to a sender 60 that indicates a receiving application 74

has a first and second buffer of sizes 4 and 2 bytes, respectively, for receiving data).

Response to Arguments

5. Applicant's arguments filed August 15, 2007 have been fully considered but they are not persuasive.

The Applicant respectfully traverses the rejection of claims 31-39 on the ground of nonstatutory obviousness-type double patenting. The Examiner respectfully disagrees with the Applicant. Although the conflicting claims are not identical, they are not patentably distinct from each other because the examiner recognizes that obviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

Furthermore, the Applicant respectfully traverses that no disclosure in Forin of the sender determining the receiver to have at least two buffers. The Examiner respectfully disagrees with the Applicant. Forin teaches that a receiver 62 sends a credit message 82 to a sender 60 that indicates a receiving application 74 has a first and second buffer of sizes 4 and 2 bytes, respectively, for receiving data. Therefore as the claims are interpreted in their broadest sense, the Examiner believes that Forin indeed does render the Applicant's invention anticipated.

Conclusion

6. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Feben M. Haile whose telephone number is (571) 272-3072. The examiner can normally be reached on 6:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris To can be reached on (571) 272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Doris H. To

10/17/2007



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